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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 4432 of 1996

Petitioner		Vidya Shankar Tiwari, aged about___years, son of Shri B. P. Tiwari, Assistant Teacher, Nagarpalika Ucchatar Madhyamik Shala, Dhamtari, District- Raipur, M.P. (Now C.G.)
	Versus	
Respondents	1.	The State of Madhya Pradesh, through, Secretary, School Education, Vallabh Bhawan, Bhopal (Now State of Chhattisgarh, Mantralaya, Raipur).
	2.	Joint Director, Public Instructions, M.P. Raipur Division, Raipur.
	3.	Chief Municipal Officer, Nagarpalika Parishad, Dhamtari, District- Raipur, M.P. (now C.G.).
	4.	Avasiya Senior Auditor, Local Funds Audit, Nagarpalika Parishad, Dhamtari, District- Raipur, M.P. (Now C.G.).

Single Bench : Hon'ble Mr. Justice **Satish K. Agnihotri, J.**

Mr. Awadh Tripathi, Advocate for the petitioner.

Mr. Pankaj Shrivastava, Panel lawyer for Respondents No. 1 and 2.

Mr. Yashwant Singh Thakur, Advocate for Respondents No. 3 and 4.

ORAL ORDER

(23rd December, 2005)

The following order of the Court was passed by **Satish K. Agnihotri J.**

1. Heard.

2. The petitioner was appointed as Peon on the pay scale of Rs. 125-150 vide order dated 25.8.1980 (Annexure P/3) on probation for a period of two years. Vide order dated 19.2.1983 (Annexure P/4) the petitioner was confirmed on the post of Peon after completion of successful probation period. Vide order dated 15.1.1990 (Annexure P/5) the Respondent No.3 appointed the petitioner pursuant to the recommendation dated 29.12.1989 of the District Selection

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Committee on the post of Assistant Teacher (Lab Assistant) at the pay scale of Rs. Rs. 975-1650 (975-25-1000-30-1210-40-1450-50-1650). Thereafter the services of the petitioner was confirmed on the post of Assistant Teacher vide order dated 16.9.1992 (Annexure P/6) passed by the Respondent No.3. Accordingly the petitioner started getting salary of the Assistant Teacher in the pay scale of Rs. 1200 – 2040.

3. After a period of about four years the petitioner received the impugned notice dated 17.5.1996 (Annexure P/1) from Respondent No.4 calling upon the petitioner to deposit the excess amount paid to him on the basis of pay scale of Assistant Teacher i.e. Rs. 1200-2040 because he was entitled to the pay scale of Lab Assistant of Rs. 950-1530.

4. Mr. Awadh Tripathi, learned counsel for the petitioner submits that the petitioner was appointed as Assistant Teacher vide order dated 15.1.1990 pursuant to the recommendation made by the District Selection Committee. Thereafter he was confirmed on the post of Assistant Teacher w.e.f. 16.1.1990 vide order dated 16.9.1992 passed by the Respondent No.3. Admittedly the pay scale of the Assistant Teacher was Rs. 1200-2040. Learned counsel further submitted that the impugned order has been passed without affording an opportunity of hearing and by treating the petitioner as Lab Assistant. It was further contended that the orders dated 15.1.1990 and 16.1.1992 passed by the Respondent No.3 are unambiguous and clear. There is no vagueness in both the orders.

5. Mr. Yashwant Singh Thakur, learned counsel appearing for the Respondent No.3 submitted that as a matter of fact the petitioner was recommended for appointment on the post of Lab Assistant but the order dated 15.1.1990 indicates "Assistant Teacher"(Lab Assistant) and the pay scale was also fixed Rs. 975-1650. He referred the recommendation of the District Selection Committee dated

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29.12.1989 (Annexure R-3/2) which mentions that the petitioner was recommended for appointment on the post of Lab Assistant. It was further contended that the orders dated 15.1.190 and 16.9.1992 were passed inadvertently by mistake. On query, learned counsel informed that no action has been taken against the officer who had passed the orders dated 15.1.1990 and 16.9.1992 thereby the petitioner was promoted and confirmed on the post of Assistant Teacher and the pay scale of the Assistant Teacher was accordingly given. It was next contended that there was no post of Assistant Teacher in the staffing pattern of the school.

6. After hearing learned counsel for the parties and perusing records appended to the petition as well as to the return, it is evident that the petitioner was appointed as Assistant Teacher (Lab Assistant) vide order dated 15.1.1990. The petitioner was confirmed on the post of Assistant Teacher vide order dated 16.9.1992. The petitioner has worked as Assistant Teacher and was paid salary of the Assistant Teacher, which is not disputed by learned counsel for the respondents also. Even otherwise, the principle of natural justice has also not been complied with. The petitioner had bonafide accepted the post and obtained salary on the basis of unambiguous and clear orders dated 15.1.1990 and 16.9.1992 passed by the Respondent No.3. The petitioner had not made any misrepresentation to obtain the post of Assistant Teacher and consequently salary thereof. If there was any mistake, the same was committed by the Respondent No.3. For the mistake of the respondent/employer, the petitioner could not be penalized without following principles of natural justice. Before asking the petitioner for making refund of extra payment, no opportunity of hearing was afforded to the petitioner. The petitioner had adjusted himself to the facts of the case and had utilized the money what was

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legally and duly paid to him. No opportunity of hearing was given to the petitioner before the impugned order dated 17.5.1996 was passed and as such the same is unreasonable, arbitrary and deserves to be quashed.

7. Learned counsel for the petitioner has cited decision of the Supreme Court in **Sahib Ram Vs. State of Haryana & others**, (1995 Supp (1) S.C.C. 18) wherein it was held that :- *"Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant."*

8. For the reasons stated above, in the facts and circumstances of the case, the petition is allowed. The impugned order dated 17.5.1996 (Annexure P/1) is quashed. No order as to costs.

Sd/-
SATISH K. AGNIHOTRI
Judge

Thakur